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Howard P. Magaliff

*Attorneys for Howard P. Magaliff,  
Chapter 7 Trustee*

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X	
In re:	:
	:
AVIATION SOFTWARE, INC.,	:
	:
Debtor.	:
-----X	
HOWARD P. MAGALIFF, as Trustee of	:
Aviation Software, Inc.,	:
	:
Plaintiff,	:
	:
– against –	:
	:
GIUSEPPINA FEINGOLD,	:
	:
Defendant.	:
-----X	

Chapter 7  
Case No. 13-22702 (RDD)

Adv. Pro. No. 15-\_\_\_\_\_

**COMPLAINT TO RECOVER FRAUDULENT TRANSFERS**

Howard P. Magaliff, the chapter 7 trustee of the estate of Aviation Software, Inc. (the “Debtor”), as plaintiff (“Plaintiff” or the “Trustee”), as and for his complaint against Giuseppina Feingold (the “Defendant”), alleges the following upon knowledge as to his own acts and otherwise upon information and belief:

**INTRODUCTION**

1. Plaintiff brings this action pursuant to Rule 7001(1) of the Federal Rules of Bankruptcy Procedure (“Bankruptcy Rules”) and sections 544(b)(1) and 550(a) of title 11,

United States Code (the “Bankruptcy Code”), to avoid and recover constructive fraudulent transfers made by the Debtor to Defendant within six years prior to the Filing Date.

### **THE PARTIES**

1. The Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code on May 1, 2013 (the “Filing Date”).

2. By Order dated June 30, 2014 (the “Conversion Date”), the Court granted the motion of the United States Trustee and converted the Debtor’s chapter 11 case to a case under chapter 7 of the Bankruptcy Code.

3. The Trustee was appointed as the chapter 7 interim trustee of the Debtor on July 1, 2014, and pursuant to section 702(d) of the Bankruptcy Code serves as the permanent trustee.

4. The Defendant resides in New York.

### **JURISDICTION AND VENUE**

5. This Court has jurisdiction pursuant to 28 U.S.C. §§ 157 and 1334.

6. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

7. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). If any of the claims asserted in this adversary proceeding are determined to be non-core, Plaintiff consents to the entry of final judgment by the Bankruptcy Court.

### **GENERAL ALLEGATIONS**

8. Prior to the Conversion Date, the Debtor was in the business of providing bar code scanning services to airlines for shipping and tracking mail, packages and baggage.

9. The Debtor is owned by Gordon Rosen (“Rosen”).

10. Rosen is personal friends with the Defendant, a physician with medical-related businesses in Rockland County.

11. Within six years of the Filing Date, the Debtor made the transfers identified in Exhibit 1 to or for the benefit of the Defendant (the “Transfers”).

**FIRST CAUSE OF ACTION**  
**(Avoidance of Payments as Constructive Fraudulent Transfers Pursuant to 11 U.S.C. § 544(b)(1) and DCL § 273)**

12. Plaintiff incorporates each of the foregoing paragraphs as if fully set forth herein.

13. Pursuant to 11 U.S.C. § 544(b)(1), a trustee may avoid any transfer of an interest of the debtor in property or any obligation incurred by the debtor that is voidable under applicable law by a creditor holding an unsecured claim that is allowable under section 502 of the Bankruptcy Code.

14. As reflected in the Debtor’s Amended Schedule F filed in this case [doc. 14], the Debtor has at least one unsecured creditor with a fixed, liquidated and non-contingent claim that is allowable under section 502 of the Bankruptcy Code.

15. Pursuant to section 273 of the New York Debtor and Creditor Law (“DCL”), every conveyance made and every obligation incurred by a person who is or will be thereby rendered insolvent is fraudulent as to creditors without regard to his actual intent if the conveyance is made or the obligation is incurred without a fair consideration.

16. The Transfers were made to Defendant without fair consideration in return within the meaning of DCL § 272.

17. The Debtor was insolvent when the Transfers were made and continued to remain insolvent through the Filing Date.

18. At all times relevant to the allegations in this complaint, the Debtor had negative net worth, insufficient capital to operate its business and was cash flow negative. At-

tached as Exhibit 2 are balance sheets prepared from the Debtor's QuickBooks files that show the Debtor's insolvency as of December 31, 2008, 2009, 2010, 2011 and 2012.

19. Pursuant to 11 U.S.C. § 544(b)(1), the Trustee is entitled to judgment avoiding the Transfers for the benefit of the creditors of the Debtor's estate.

20. Pursuant to 11 U.S.C. § 550(a), the Trustee is entitled to judgment directing payment from Defendant in the amount of the Transfers.

**SECOND CAUSE OF ACTION**  
**(Avoidance of Payments as Constructive Fraudulent Transfers**  
**Pursuant to 11 U.S.C. § 544(b)(1) and DCL § 274)**

21. Plaintiff incorporates each of the foregoing paragraphs as if fully set forth herein.

22. Section 274 of the DCL provides: "Every conveyance made without fair consideration when the person making it is engaged or is about to engage in a business or transaction for which the property remaining in his hands after the conveyance is an unreasonably small capital, is fraudulent as to creditors and as to other persons who become creditors during the continuance of such business or transaction without regard to his actual intent."

23. The Debtor was engaged in business when it made the Transfers.

24. The Debtor was left with unreasonably small capital after it made the Transfers.

25. The Debtor did not receive fair consideration from the Defendant in return for the Transfers.

26. Pursuant to 11 U.S.C. § 544(b)(1), the Trustee is entitled to judgment avoiding the Transfers for the benefit of the creditors of the Debtor's estate.

27. Pursuant to 11 U.S.C. § 550(a), the Trustee is entitled to judgment directing payment from Defendant in the amount of the Transfers.

**WHEREFORE**, the Trustee requests the entry of judgment as follows:

- (a) On the first and second causes of action, avoiding the Transfers, and directing payment to the Trustee in an amount to proved at trial but not less than the amount of the Transfers;
- (b) Costs and attorney fees; and
- (c) Such other and further relief as is necessary and proper.

Dated: New York, New York  
June 29, 2015

RICH MICHAELSON MAGALIFF  
MOSER, LLP  
Counsel for the Trustee  
By:

/s/ Howard P. Magaliff  
HOWARD P. MAGALIFF  
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New York, NY 10017  
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**EXHIBIT 1**

Aviation Software, Inc.  
Analysis of payment to or for the benefit of  
Giuseppina Feingold

<u>Check Date</u>	<u>Check #</u>	<u>Description</u>	<u>Amount</u>
<u>Deposits</u>			
2/9/2011	Deposit	Jacques G Simon Attorney at Law	7,109.00
			<u>7,109.00</u>
<u>Payments</u>			
12/2/2010	CBUSOL Transfer Debit	Giuseppina Benincaa-Feingold	(15,000.00)
9/9/2009	16042	Pina Feingold	(50,000.00)
7/12/2010	16272	Woodland Camp	(1,075.00)
1/10/2011	16372	Jacques Simon	(5,000.00)
1/10/2011	16373	Verner Simon	(2,500.00)
1/10/2011	Outgoing W/T	Guisseppina Benincasa-Feingold	(5,000.00)
1/18/2011	Outgoing W/T	Jacques G Simon Atty at law	(5,000.00)
			<u>(83,575.00)</u>
Net Amount Paid			<u>(76,466.00)</u>

**EXHIBIT 2**



06/24/15

**Balance Sheet**

	<u>Dec 31, 08</u>
<b>ASSETS</b>	
Current Assets	
Checking/Savings	
ASI Consulting Services	125,975.53
Citibank -- operating (operating account)	-5,473.78
Commerce - Authority Systems	-5,384.54
Commerce Bank - operating	2,461,826.12
Commerce Bank - payroll	-2,892,750.97
HSBC	327,860.24
Total Checking/Savings	<u>12,052.60</u>
Accounts Receivable	
11000 · Accounts Receivable - EUR (Unpaid or unapplied custom...	-1,729.53
1200 · Accounts Receivable	110,198.03
Total Accounts Receivable	<u>108,468.50</u>
Other Current Assets	
1100 · Employee Exp Advance/Loan (expense advance or loan)	-12,743.27
Total Other Current Assets	<u>-12,743.27</u>
Total Current Assets	<u>107,777.83</u>
<b>TOTAL ASSETS</b>	<u><b>107,777.83</b></u>
<b>LIABILITIES &amp; EQUITY</b>	
Liabilities	
Current Liabilities	
Accounts Payable	
2000 · Accounts Payable	515,271.97
Total Accounts Payable	<u>515,271.97</u>
Other Current Liabilities	
128 · Deposits (customer deposits)	243,400.65
210 · Shareholder Loan to Co	-707,181.70
2100 · Payroll Liabilities	58,997.35
211 · RG Loan	-920.00
220-5 · Contrctr Fed Payable (945) (Indep Sales Rep Withholdg)	-28,475.06
7111 · ASICS - Deposits	35,000.00
Total Other Current Liabilities	<u>-399,178.76</u>
Total Current Liabilities	<u>116,093.21</u>
Total Liabilities	116,093.21
Equity	
284 · Retained Earnings (Retained Earnings)	26,187.75
3000 · Opening Bal Equity	30,000.00
Net Income	-64,503.13
Total Equity	<u>-8,315.38</u>
<b>TOTAL LIABILITIES &amp; EQUITY</b>	<u><b>107,777.83</b></u>

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**Balance Sheet**

	<u>Dec 31, 09</u>
<b>ASSETS</b>	
<b>Current Assets</b>	
<b>Checking/Savings</b>	
ASI Consulting Services	125,975.53
Citibank -- operating (operating account)	-860,066.18
Citibank -- payroll	-610,467.36
Commerce - Authority Systems	-5,384.54
Commerce Bank - operating	3,756,676.36
Commerce Bank - payroll	-3,674,350.03
HSBC	327,860.24
<b>Total Checking/Savings</b>	<u>-939,755.98</u>
<b>Accounts Receivable</b>	
11000 · Accounts Receivable - EUR (Unpaid or unapplied custom...	1,620.98
1200 · Accounts Receivable	191,980.21
<b>Total Accounts Receivable</b>	<u>193,601.19</u>
<b>Other Current Assets</b>	
1100 · Employee Exp Advance/Loan (expense advance or loan)	-14,693.27
1111 · Loan TO Shareholder	20,000.00
<b>Total Other Current Assets</b>	<u>5,306.73</u>
<b>Total Current Assets</b>	<u>-740,848.06</u>
<b>TOTAL ASSETS</b>	<u><b>-740,848.06</b></u>
<b>LIABILITIES &amp; EQUITY</b>	
<b>Liabilities</b>	
<b>Current Liabilities</b>	
<b>Accounts Payable</b>	
2000 · Accounts Payable	581,058.48
<b>Total Accounts Payable</b>	<u>581,058.48</u>
<b>Other Current Liabilities</b>	
128 · Deposits (customer deposits)	302,060.65
210 · Shareholder Loan to Co	-758,329.26
2100 · Payroll Liabilities	75,709.65
211 · RG Loan	-920.00
220-5 · Contrctr Fed Payable (945) (Indep Sales Rep Withholdg)	-28,475.06
7111 · ASICS - Deposits	35,000.00
<b>Total Other Current Liabilities</b>	<u>-374,954.02</u>
<b>Total Current Liabilities</b>	<u>206,104.46</u>
<b>Total Liabilities</b>	<u>206,104.46</u>
<b>Equity</b>	
284 · Retained Earnings (Retained Earnings)	-38,315.38
3000 · Opening Bal Equity	30,000.00
Net Income	-938,637.14
<b>Total Equity</b>	<u>-946,952.52</u>
<b>TOTAL LIABILITIES &amp; EQUITY</b>	<u><b>-740,848.06</b></u>

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**Balance Sheet**Dec 31, 10**ASSETS****Current Assets****Checking/Savings**

ASI Consulting Services	125,975.53
Citibank -- operating (operating account)	-322,827.55
Citibank -- payroll	-1,957,274.13
Commerce - Authority Systems	-5,384.54
Commerce Bank - operating	4,222,283.36
Commerce Bank - payroll	-3,674,350.03
HSBC	327,860.24

<b>Total Checking/Savings</b>	<b>-1,283,717.12</b>
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**Accounts Receivable**

11000 · Accounts Receivable - EUR (Unpaid or unapplied custom...	-1,913.23
1200 · Accounts Receivable	241,544.74

<b>Total Accounts Receivable</b>	<b>239,631.51</b>
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**Other Current Assets**

1100 · Employee Exp Advance/Loan (expense advance or loan)	-14,140.32
1111 · Loan TO Shareholder	20,000.00

<b>Total Other Current Assets</b>	<b>5,859.68</b>
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<b>Total Current Assets</b>	<b>-1,038,225.93</b>
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**TOTAL ASSETS****-1,038,225.93****LIABILITIES & EQUITY****Liabilities****Current Liabilities****Accounts Payable**

2000 · Accounts Payable	653,040.66
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<b>Total Accounts Payable</b>	<b>653,040.66</b>
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**Other Current Liabilities**

128 · Deposits (customer deposits)	327,560.65
210 · Shareholder Loan to Co	-766,329.26
2100 · Payroll Liabilities	102,823.87
211 · RG Loan	-920.00
220-5 · Contrctr Fed Payable (945) (Indep Sales Rep Withholdg)	-28,475.06
7111 · ASICS - Deposits	35,000.00

<b>Total Other Current Liabilities</b>	<b>-330,339.80</b>
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<b>Total Current Liabilities</b>	<b>322,700.86</b>
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<b>Total Liabilities</b>	<b>322,700.86</b>
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**Equity**

284 · Retained Earnings (Retained Earnings)	-976,952.52
3000 · Opening Bal Equity	30,000.00
Net Income	-413,974.27

<b>Total Equity</b>	<b>-1,360,926.79</b>
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**TOTAL LIABILITIES & EQUITY****-1,038,225.93**

06/24/15

**Balance Sheet**Dec 31, 11**ASSETS****Current Assets****Checking/Savings**

ASI Consulting Services	125,975.53
Citibank -- operating (operating account)	90,960.82
Citibank -- payroll	-2,754,209.80
Commerce - Authority Systems	-5,384.54
Commerce Bank - operating	4,200,342.87
Commerce Bank - payroll	-3,674,350.03
HSBC	327,860.24

Total Checking/Savings	-1,688,804.91
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**Accounts Receivable**

11000 · Accounts Receivable - EUR (Unpaid or unapplied custom...	-1,573.64
1200 · Accounts Receivable	516,158.92

Total Accounts Receivable	514,585.28
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**Other Current Assets**

1100 · Employee Exp Advance/Loan (expense advance or loan)	-14,140.32
1111 · Loan TO Shareholder	20,000.00

Total Other Current Assets	5,859.68
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Total Current Assets	-1,168,359.95
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**TOTAL ASSETS****-1,168,359.95****LIABILITIES & EQUITY****Liabilities****Current Liabilities****Accounts Payable**

2000 · Accounts Payable	794,570.91
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Total Accounts Payable	794,570.91
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**Other Current Liabilities**

128 · Deposits (customer deposits)	327,560.65
210 · Shareholder Loan to Co	-846,998.53
2100 · Payroll Liabilities	126,849.33
211 · RG Loan	-920.00
220-5 · Contrctr Fed Payable (945) (Indep Sales Rep Withholdg)	-28,475.06
7111 · ASICS - Deposits	35,000.00

Total Other Current Liabilities	-386,983.61
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Total Current Liabilities	407,587.30
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Total Liabilities	407,587.30
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**Equity**

284 · Retained Earnings (Retained Earnings)	-1,390,926.79
3000 · Opening Bal Equity	30,480.00
Net Income	-215,500.46

Total Equity	-1,575,947.25
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**TOTAL LIABILITIES & EQUITY****-1,168,359.95**

06/24/15

**Balance Sheet**Dec 31, 12**ASSETS****Current Assets****Checking/Savings**

ASI Consulting Services	125,975.53
Citibank -- operating (operating account)	90,960.82
Citibank -- payroll	-2,754,209.80
Commerce - Authority Systems	-5,384.54
Commerce Bank - operating	4,106,365.17
Commerce Bank - payroll	-3,690,949.28
HSBC	327,860.24

<b>Total Checking/Savings</b>	<b>-1,799,381.86</b>
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**Accounts Receivable**

11000 · Accounts Receivable - EUR (Unpaid or unapplied custom...	30,944.02
1200 · Accounts Receivable	569,316.20

<b>Total Accounts Receivable</b>	<b>600,260.22</b>
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**Other Current Assets**

1100 · Employee Exp Advance/Loan (expense advance or loan)	-14,140.32
1111 · Loan TO Shareholder	20,000.00

<b>Total Other Current Assets</b>	<b>5,859.68</b>
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<b>Total Current Assets</b>	<b>-1,193,261.96</b>
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**TOTAL ASSETS****-1,193,261.96****LIABILITIES & EQUITY****Liabilities****Current Liabilities****Accounts Payable**

2000 · Accounts Payable	829,370.91
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<b>Total Accounts Payable</b>	<b>829,370.91</b>
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**Other Current Liabilities**

128 · Deposits (customer deposits)	327,560.65
210 · Shareholder Loan to Co	-881,798.53
2100 · Payroll Liabilities	133,886.46
211 · RG Loan	-920.00
220-5 · Contrctr Fed Payable (945) (Indep Sales Rep Withholdg)	-28,475.06
7111 · ASICS - Deposits	35,000.00

<b>Total Other Current Liabilities</b>	<b>-414,746.48</b>
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<b>Total Current Liabilities</b>	<b>414,624.43</b>
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**Total Liabilities**

414,624.43

**Equity**

284 · Retained Earnings (Retained Earnings)	-1,606,427.25
3000 · Opening Bal Equity	30,480.00
Net Income	-31,939.14

<b>Total Equity</b>	<b>-1,607,886.39</b>
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**TOTAL LIABILITIES & EQUITY****-1,193,261.96**